

Planning Commission Date: October 25, 2006

Item No. **1.**

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report prepared by: Cindy Hom

Public Hearing: Yes: X No:

Notices Mailed On: 10/13/06

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TITLE: **USE PERMIT AMENDMENT NO. UA2006-2 - Continuance**

Proposal: A request for approval to add sales of all types of alcohol in conjunction with an existing convenience store.

Location: 1491 South Main Street (APN 86-18-052)

RECOMMENDATION: Denial

Applicant: Aslam Ali, 1491 South Main Street, Milpitas, CA 95035

Property Owner: Same as above

Previous Action(s): "S" Zone approval and amendments, use permit, and subsequent denials

Environnemental Info: Categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities"—"... permitting, ... licensing ... of existing ... private structures ... involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination") of the California Environmental Quality Act (CEQA) Guidelines.

General Plan Designation: General Commercial

Present Zoning: General Commercial (C2) with "S" Combining District

Existing Land Use: Convenience store

Agenda Sent To: Applicant and property owner
Richard Warren, 929 Fresno Avenue, Berkley, CA 94707
Bob Sylvia, ABC Consulting, 3984 Washington Blvd. #126,
Fremont, CA 94538

Pat Forrest, Starlite Pines HOA, 3851 Charter Park Drive, San Jose,
CA 95136

Russ Bargstadt, 1307 Stardust Way, Milpitas, CA 95035

Attachments:

- 1) Revised Police Summary Report
- 2) Copy of Applicant's letter dated September 9, 2006 to the Pines HOA
- 3) Copy of the Approved Minutes from the May 2, 2006 Community Meeting.
- 4) Copy of the Unapproved Minutes from the September 11 Community Meeting,
- 5) Photo Journal of site visit

PJ No.

2450

BACKGROUND

This item was continued from the September 27, 2006 Planning Commission meeting at the applicant's request. The purpose of the continuance was to allow the applicant to further review the police activity report for Jerry's Market to ascertain whether any of incidents involved customers of the store and/or involved any employees of Jerry's Market. Staff provided the additional information as requested. A copy of the requested information is provided in the attachments. See Attachment 1.

Police Summary Report Analysis

As provided in the previous staff report, there were a total of 45 incidents that relate to Jerry's Market which are summarized in the following table:

Table 1: Summary of Reported Activity

INCIDENT TYPE	2001	2002	2003	2004	2005	2006	TOTAL # OF INCIDENT TYPES
FRAUDULENT TRANSACTION ACTIVITY	2*	5*	1*	1*	1*	3*	13
FIGHTS / ARGUMENTS	1	2	1		1	1	6
STOPS FOR SUSPICIOUS PERSONS/VEHICLES RESULTING IN ARREST		6	1			2	9
GRAFFITI		1					1
THEFT		1*	2*		2*		5
FOUND STOLEN VEHICLE ON PREMISE				1			1
REPORT OF VEHICLE ACCIDENT			2				2
INTOXICATED PERSON				1*	2*		3
PHYSICAL ASSAULT		1			1		2
LOUD NOISE						1	1
MISC (911 HANG UP CALL, SCARY DOG)						2*	2
TOTAL # OF CALLS PER YEAR	3	16	7	3	7	9	45

Calls From Jerry's Market Staff are indicated with and asterisk (*)

As shown in the table above, (18) of the (45) police incidents were calls from Jerry's Market staff to report fraudulent transactions and theft. Therefore, 40% of the calls were Jerry's Market reporting the criminal activity.

There are (22) incidents of concern that substantiate the negative neighborhood impacts expressed by the neighboring Pines residents. Calls for service include (9) calls related to suspicious persons and/or vehicles stops. These calls resulted in police arrests of individuals for outstanding warrants, violation of parole, and drug possession; (3) calls of intoxicated person on the premise--2 of which were reported by Jerry's Market; (6) calls for physical fights and/or verbal altercations; (2) reports of physical assaults; (1) incident of graffiti, and (1) call for loud noises.

In further analysis, Police Department records indicate that (3) of the (22) incidents of concern listed above involved a customer of Jerry's Market and are noted in items 15, 26, and 35 of the Police Activity Report for Jerry's Market. However, (3) of the remaining (19) incidents in which

it was undetermined if the individual involved was a customer, the individuals were observed with open bottles of beer as noted in item no. 6, 7, and 33. In another incident (item 10), a person was loitering in front of the business to conduct sale and transfer of drugs and ultimately arrested for possession of drugs.

Based on the police incident reports there is a nexus between calls for service at Jerry's Market and the store's hours of operation. Almost all of the calls for service occur regularly during the store's hours of operation and diminish during hours the store was closed.

It is staff's opinion, the sale of hard liquor would perpetuate the ongoing activities that stem from the property because the establishment would continue to offer individually packaged beverage containers that are ready for immediate consumption. As demonstrated in the public testimony, police records and staff site visits, persons on the subject property have been cited on several occasions for public intoxication. In particular, police records have identified individuals with open beer bottles and public comments from the residential neighbors indicate drinking in common area between Jerry's Market and residential homes occurs as evidenced by the littering of beer bottles. The store's operations negatively impact the surrounding neighborhood by enabling public nuisances such as public intoxication to occur within the area, the introduction of unsavory people, and fostering objectionable conditions in the neighborhood. Sale of all types of alcohol would make these conditions worse.

Community Outreach

The applicant met with the Pines Home Owner's Association and nearby residents on several occasions. The purpose of the community meeting was to obtain community input on the matter.

On August 3, 2006, the applicant met with the adjacent property owners along Lonetree Court and Greentree Way to discuss the specific community concerns expressed during the public hearing. Through this process, the applicant offered additional measures to address concerns related to crime activity. The measures were added as means to reduce the nuisances identified by the neighboring residents. The proposed conditions are contained in the letter dated September 9, 2006 and distributed to the Pines residents and at the September 11, 2006 Pines HOA meeting. (See Attachment 2)

Second Community Meeting

The applicant held a second community meeting with the Starlite Pines HOA on September 11, 2006 to present and discuss proposed conditions of approval offered by Jerry's Market. The proposed conditions that were discussed at the community meeting included the following:

1. **REDUCED HOURS OF OPERATION:** Jerry's Market is presently allowed to operate from 6:00 a.m. to 2:00 a.m. The applicant proposed to operate from 6:00 a.m. to 11:00 p.m. every night.
2. **CLOSURE OF THE BACK PARKING AREA:** Close parking lot between the hours of 10:00 p.m. and 6:00 a.m.
3. **CRIME ACTIVITY AND PREVENTION:** Provide the Starlite Pines HOA \$100,000.00 to assist with nuisance prevention efforts. This contribution could be used as determined by

the HOA. For example, hiring a professional Neighborhood Watch" coordinator or off duty police officers to enforce HOA rules.

4. ADD "GOOD NEIGHBOR" SIGNS: Add "Good Neighbor" signs in the parking lot to remind customers to avoid loud noise and music that might disturb nearby neighbors.
5. LITTER AND GRAFFITI PREVENTION: Pick up litter and abate graffiti twice each day.
6. IMPROVE VIDEO SURVEILLANCE OF PARKING AREA: Install two additional cameras (4 total) to give complete coverage of the parking area and retain video recordings for 14 days and make them available to law enforcement upon request.
7. ADD VIDEO SURVEILLANCE OF JERRY'S PARKING AREA: Install additional video surveillance of the HOA's side of the common wall provided the HOA agrees that Jerry's Market will not be liable for providing such service.
8. SIGNS NOT TO LOITER AND DRINKING OF ALCOHOL IS PROHIBITED: Applicant will provide improved signs reminding customers not to loiter and prohibit any drinking of alcohol on the property.
9. REPAIR OF COMMON WALL: Applicant agrees to offer to contribute \$10,000.00 to the HOA to be used for the repair of the common wall on the property line.
10. LIMITING FLOOR AREA THAT MAY DISPLAY ALCOHOLIC BEVERAGES: The applicant agrees to limit the display of alcoholic beverages to no more than 45% of the total floor area.

At the September 11, 2006 community meeting, approximately 60-70 people were in attendance including the applicant and staff. In summary, twelve (12) of the thirteen (13) people who spoke on the item were opposed to the proposed conditions as stated above and the application request to sell hard liquor. The HOA Board voted unanimously to oppose the permit and conditions offered by the applicant. The residents and Pines HOA board maintain their earlier position that the sale of hard liquor will exacerbate the existing problems with people littering, loitering, attracting unsavory people, and that the proposed use is incompatible with the neighborhood. Included with the staff report is a copy of the Starlite Pines Homes Association Board of Directors Meeting Minutes and Manager's Notes. (See Attachment 3)

Other Observations

As directed by the Planning Commission staff met with the Pines HOA President and toured other park areas and greenbelts in the vicinity to determine if similar problems were evident in other areas of the Pines neighborhood. Staff observed the following conditions:

Lonetree Court Area

1. Pieces of litter found along the walking path in the Pines Development behind Jerry's Market
2. Graffiti on utility box and wooden fence

Greenbelt area that abuts S. Abel Street and Capitol Avenue

1. Numerous cigarette butts and empty cigarette boxes
2. Various litter including empty McDonald beverage cup, food wrappers, etc.
3. Several empty beer bottles and beer can

Mini Park end of Evening Star Court

1. Litter
2. Cigarette butts, matches, and discarded cigarette lighters
3. Empty beer bottle

4. Shattered beer glass on sidewalk and into the tan bark area of the playground
5. Tagging on wall
6. Empty condom wrapper
7. Used condom
8. Vandalism of play equipment

Mini Park near Hwy 880 sound wall and Summerfield

1. Graffiti on park furniture

Greenbelt walking path along Hwy 880

1. No observation of littering or graffiti.

Greenbelt walking path adjacent to Montague Expressway

1. Graffiti on PG&E Power pole
2. Litter

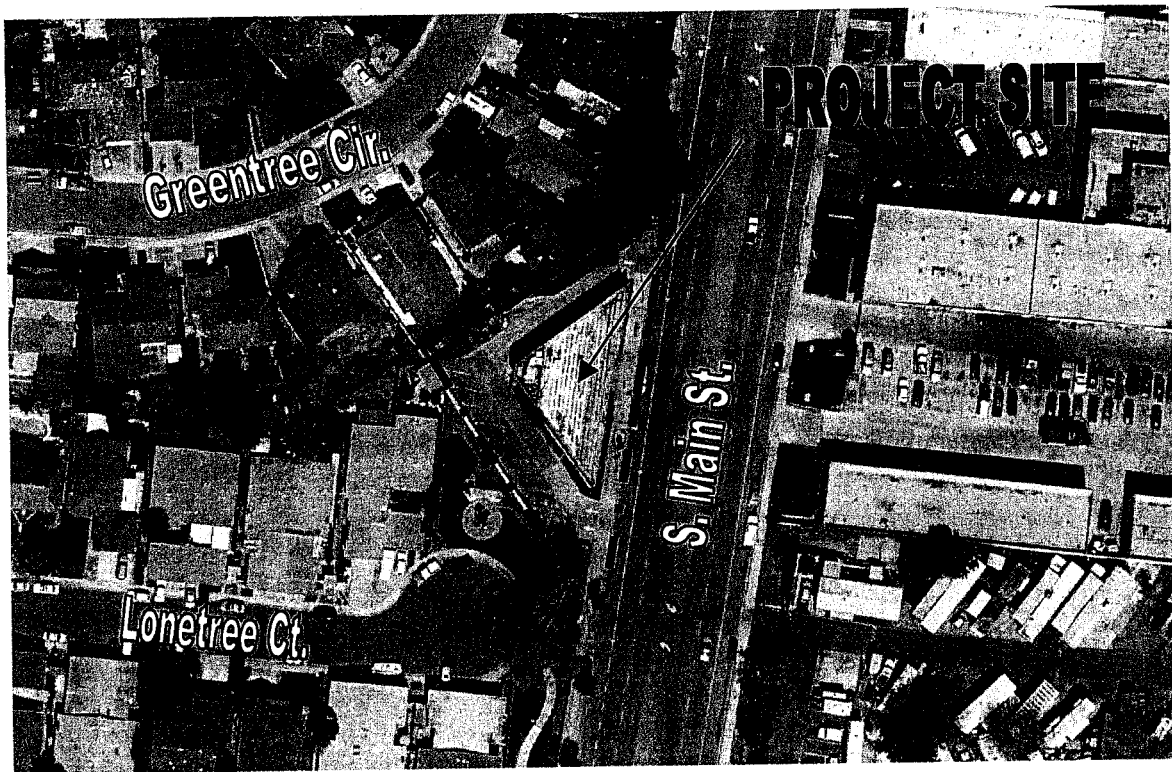
It appears that most of the litter, graffiti, and common area for gathering are along the greenbelt pathway and mini parks that adjacent to S. Abel Street. It is staff's opinion that it is not a systemic problem within the Pines neighborhood because the problems are concentrated on one side of the development (mainly on the east side of the development).

At the June 14, 2006 meeting, the Planning Commission also directed Staff to inquire with the Police Department whether there are any Police records that would validate public comments regarding drug paraphernalia found in the common areas around Jerry's Market and throughout the Pines Neighborhood. According to Police records there are no recent reports of discarded drug paraphernalia. However, in 2001, the Police Department initiated a Community Oriented Project because of the influx of calls received for Jerry's Market, Lonetree Court, and Pinewood Park. The project resulted with arrests for drug activity in Lonetree Court Park.

The Planning Commission also inquired if the Public Works Park Maintenance Section encountered any discarded drug paraphernalia in the park area during routine maintenance. The City's Park Maintenance Section indicated that there are no reports of discarded drug paraphernalia in the Pinewood Park Area. The Park Maintenance Section maintains Pinewood Park only. All other mini parks and greenbelt areas are maintained by the HOA. Staff also inquired with the Pines HOA property management if they or their park maintenance company maintains a log or reports that would account for where and when drug paraphernalia was found. The response from the Pines HOA property management was that neither keeps records of these types of findings.

Site Description

Jerry's Market is located on a .51-acre site and is situated between the Starlite Pines residential development and South Main Street. An aerial photo of the subject site is provided in the next page:



The surrounding land uses include single-family homes to the north, west and south. East of the project site is South Main Street and various automotive repair shops, a mobile homes park, and a motel.

The project site is currently zoned General Commercial (C2). Adjacent zoning districts include: Single Family Residential (R1-6) Zoning District to the west and Multi-Family, Very High Density Residential (R4) to the east. Currently the City has received Planning applications to redevelop the motel, mobile home site, and the South Bay Tech Business Park to multi-family, very high density residential. New residential project proposed in the area include Baystone, Aspen Village, and Estrella as well as Paragon that is currently under construction at the corner of South Main Street and Montague Expressway.

THE APPLICATION

The application has been submitted pursuant to Section 19.03-20 (General Commercial, Conditional Uses, Liquor stores) and Section 57.00 (Conditional Uses Permitted by the Commission) of the Milpitas Zoning Ordinance. The applicant is requesting approval of a conditional use permit to allow sales of all types of alcohol in conjunction with an existing convenience store (Jerry's Market). The sale of beer and wine for off-site consumption is currently allowed as a legal non-conforming use. Based on the Planning files, the 1982 use existed prior to the Zoning requirement for a Conditional Use Permit. The applicant maintains that the use of the site will remain a convenience market and that the sale of alcohol products will be secondary to the sale of convenience and food items.

ISSUES

For approval of this Use Permit Amendment, the Planning Commission must make the following findings:

1. Conformance with the General Plan
2. Conformance with the Zoning Ordinance
3. The proposed use and location will not be detrimental or injurious to property, public health, safety and welfare and conforms with the General Plan and Zoning Ordinance.

Conformance with the General Plan and Zoning Ordinance

The Project conforms to General Plan and is consistent with Implementing Policy 2.a-I-6 which encourages a balanced economic base that can resist any downturns in any one economic sector. Although the proposed use is a conditionally permitted with a use permit in the C2 Zone and serves the general commercial needs of the City, it is not consistent with Section 57 (Use Permits) for neighborhood impacts which are described in the section below.

Detrimental or injurious to property, public health, safety and welfare

As indicated in the earlier in the staff report and subsequent attachments, the Pines neighborhood adamantly opposes the Project. The sale of hard liquor would be not suitable with the surrounding area given the location abuts residential homes and is within proximity to Zanker School and the Elmwood Correction Facility. Staff could not make the sufficient finding that the proposed use will not be disruptive to public safety and general welfare. The propose sale of hard liquor would perpetuate the negative impacts that are already experienced in the neighborhood. The Police reports validate the community concerns related to loitering, intoxicated people on the premise, and attracting unsavory individuals.

Conformance with CEQA

The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities"—"... permitting, ... licensing ... of existing ... private structures ... involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination") of the California Environmental Quality Act (CEQA) Guidelines.

RECOMMENDATION

Close the Public Hearing. Deny Use Permit Amendment No. UA2006-2 based on the follow Findings.

FINDINGS

1. The Project conforms to General Plan in that it encourages a balanced economic base that can resist any downturns in any one economic sector.
2. The Project is in conformance with the C2 Zoning Ordinance. The use is conditionally permitted with a use permit in the C2 Zone and is consistent with the purpose and intent of the C2 zone by serving the general commercial needs of the City.

3. The Project is not in conformance with Section 57 because the finding cannot be made that the proposed use will not be detrimental or injurious to property or impact public health, safety and general welfare given the following reasons:
 - a) The proposed use is not compatible with the surrounding single-family neighborhood and adjacent park. The use would negatively impact the adjacent residents and park areas. There is considerable opposition within the Starlite Pines residential development for the sale of hard liquor as indicated through community meetings and written comments about liquor being consumed in common areas of Starlite Pines, the alcohol aspect of the business invites unsavory individuals who are disruptive with noise and deposit litter near the market. The sale of hard liquor would exacerbate the problems that currently exist.
 - b) The use is not suitable to the area given the location near residential homes and its close proximity to Zanker School and Elmwood Correctional Facility. Based on public comments, adjacent residents are troubled with graffiti, littering, and gathering of people who use the park areas and greenbelt pathways to smoke, drink and conduct other nuisances as evidence by the debris left behind. These activities deter residents from the customary use of the park area and the recreational enjoyment of these areas. Jerry's Market is less than 500 feet from Zanker Elementary School and is within the path of travel for Middle School and High School students. Additionally, Jerry's Market is also within walking distance of Elmwood Correctional Facility.
 - c) The use is anticipated to perpetuate the existing negative impacts to the neighborhood that are already experienced in the area based on the Police report and public comments. Over 45 incidents within a six-year period have been reported by the Milpitas Police Department that are related to Jerry's Market.
 - d) The sale of hard liquor does not provide a community benefit given the proximity to other liquor outlets within the area provide the same service.
4. The Project is categorically exempt from California Environmental Quality Impact Act (CEQA).

ATTACHMENT # 1

JERRY'S MARKET ACTIVITY July 2001 – July 2006

1. July 27, 2001; 12:11 pm [01-208-054]

Business owner reports having received 2 fraudulent checks.

2. October 15, 2001; 6:16 pm [01-288-160]

Business reports that fraudulent transactions occurred.

3. November 11, 2001; 12:01 am [01-315-001]

Physical fight between two men. Both were separated when officers arrived. One was contacted inside store. One of the involved combatants reported the incident to police. The fight occurred in front of the store. It is undetermined whether either of the combatants were store customers.

4. January 7, 2002; 12:15 pm [02-007-063]

Business reports that 2 fraudulent checks were passed.

5. January 9, 2002; 1:06 pm [02-009-080]

Business reports having received a fraudulent check

6. February 2, 2002; 4:47 pm [02-057-100]

Officers contacted suspicious person in the parking lot of the business. Officers observed that the person was holding an opened container of beer. The person was arrested for an outstanding arrest warrant. It is undetermined whether the person arrested was a store customer. The officers initiated this event. No call for service was received.

7. February 27, 2002; 4:21 pm [02-058-106]

Suspicious person stopped by officers in the parking lot of the business. Officers observed that the person was holding an opened container of beer. The person was arrested for an outstanding warrant. It is undetermined whether the person arrested was a store customer. The officers initiated this event. No call for service was received.

8. March 23, 2002; 5:42 pm [02-082-114]

Officers contacted suspicious person in the parking lot of the business. Officers observed as the person was urinating against a wall. It is undetermined whether the person arrested was a store customer. The officers initiated this event. No call for service was received. The person was arrested for two outstanding arrest warrants.

9. April 4, 2002; 9:54 pm [02-094-156]

Customer walked out of the store after shopping. She called police to report that she saw 2 suspects "tagging" an exterior wall of the business, and she provided suspect information to officers. Officers followed-up and identified the suspects. The business owner was contacted and did not desire any further action from police.

JERRY'S MARKET ACTIVITY
July 2001 – July 2006

10. April 5, 2002; 6:36 pm [02-095-131]

Officers began watching a suspicious person loitering in front of the business. Officers observed the person for at least 30 minutes. The person engaged a passer-by and an apparent exchange occurred. Officers contacted the person, and found that he was in possession of drugs. It is undetermined whether this person was a store customer. The officers initiated this event. No call for service was received.

11. June 11, 2002; 8:40 pm [02-162-147]

Officers observed a suspicious person standing in the parking lot of the business, near a motor home. Officers began speaking with the person and determined that he had an outstanding felony warrant for his arrest. The person was arrested. It is undetermined whether this person was a store customer. The officers initiated this event. No call for service was received.

12. October 18, 2002; 11:24 pm [02-291-204]

3 adult males physically fighting in front of the business. One male was down on ground with injuries upon arrival of officers. A passer-by went into the store to ask the clerk to call 911 to report the fight. It is undetermined whether the combatants were customers of the store.

13. October 25, 2002; 6:12 pm [02-298-021]

Employee reports a burglary to the business occurred.

14. November 7, 2002; 3:35 pm [02-311-107]

Employee reports suspect inside store attempting to cash fraudulent check.

15. November 8, 2002; 10:34 pm [02-312-177]

Mentally challenged female adult accosted and sexually assaulted by customer in front of business. The suspect exited the store, and walked northbound. The suspect saw the victim, who was walking southbound toward the store. The suspect accosted the victim approximately 40 feet north of the store and sexually assaulted her. The victim's mother reported the incident to police.

16. November 23, 2002; 3:04 pm [02-327-106]

Verbal argument between male and female in front of business. Officers arrived to mediate the dispute. No arrests. An anonymous person reported the incident. It is undetermined whether the two people involved were customers of the store.

JERRY'S MARKET ACTIVITY
July 2001 – July 2006

17 December 3, 2002; 10:35 am [02-337-062]

Officers contacted a suspicious person in the parking lot of the business. Officers discovered that the person had two outstanding warrants for his arrest. It is undetermined whether this person was a customer of the store. The officers initiated this event. No call for service was received.

18 December 7, 2002; 4:45 pm [02-341-111]

Employee reports customer attempting to cash bad check

19 December 11, 2002; 8:42 pm [02-345-175]

Employee reports fraudulent transaction

20 February 25, 2003; 10:31 am [03-056-044]

Employee attempting to detain fleeing customer who tried to cash bad check.

21 March 1, 2003; 4:24 pm [03-060-120]

Non-injury auto collision in driveway to business parking lot. One of the involved parties called police to report the incident. Both involved parties were store customers.

22 May 19, 2003; 2:09 pm [03-139-080]

A vehicle was stolen from the parking lot of the business. The car had been parked in the lot for 5 days due to engine trouble. The vehicle owner reported the crime to police. It is undetermined whether the vehicle owner was a customer of the business.

23 June 7, 2003; 11:27 pm [03-158-271]

Vandalism: One customer of the business intentionally damaged the vehicle of another customer while both were in the parking lot of the store. The victim customer called to report the incident to police.

24 August 1, 2003; 5:08 am [03-213-038]

Employee reports burglary to business.

25 September 8, 2003; 11:11 am [03-251-073]

Two pit-bull dogs in front of store scaring customers. The store clerk called to report the incident to police.

JERRY'S MARKET ACTIVITY

July 2001 – July 2006

26 September 21, 2003; 3:56 pm [03-264-107]

Suspicious person detained by officers in front of store. Person arrested for possession of drugs and violation of parole. The suspicious person was a store customer. Officers observed and recognized the person as he walked out of the business. The person was a known parolee. The person's vehicle was parked in front of the business. The officers initiated this event. No call for service was received.

27 October 3, 2003; 11:54 pm [03-276-248]

Several males physically fighting in parking lot of business. Officers discovered one involved person with head injuries. Two of the males physically resisted officers when contacted. An anonymous caller reported this incident to police. It is undetermined as to whether the involved parties were store customers.

28 March 26, 2004; 5:37 pm [04-086-171]

Employee reports fraudulent transaction at business.

29 April 23, 2004; 11:10 pm [04-114-239]

Employee reports intoxicated person sleeping in parking lot for past 5 hours.

30 June 7, 2004; 6:30 am [04-159-033]

Stolen vehicle found parked in lot of business. The vehicle was originally stolen in San Jose. The victim happened to find it parked in the lot of the store. The victim called to report this incident to police. The victim was not a store customer.

31 January 2, 2005; 9:14 pm [05-002-174]

Employee reports intoxicated person in store causing a disturbance

32 January 29, 2005; 3:19 pm [05-029-131]

Mentally challenged person physically assaulted and injured in front of business. Both the victim and suspect were in front of the store when the assault occurred. It is undetermined as to whether the victim or suspect were store customers. The caretaker of the victim reported this incident to police.

33 February 24, 2005; 4:34 pm [05-055-169]

"Man down" report in front of business. Officers contact a passed-out intoxicated man. Officers discovered that the intoxicated man was asleep on the sidewalk in front of the business. There was a puddle of vomit and an empty 40 oz. bottle of beer next to him. The person who reported this incident to police was not identified. It is undetermined as to whether the intoxicated man was a store customer.

34 May 31, 2005; 10:02 am [05-151-073]

Employee reports suspect attempting to cash stolen check.

JERRY'S MARKET ACTIVITY
July 2001 – July 2006

35 July 19, 2005; 10:09 pm [05-200-195]

Two males fighting in front of business. Both involved males were customers of the store. The disagreement between the two began while both were in the store. The fight occurred after they walked out. An anonymous person reported the incident to police.

36 August 4, 2005; 12:53 pm [05-216-082]

Theft from a vehicle parked in front of business. The victim left the top to his convertible down and went inside the store to make a purchase. When he came out a few minutes later, he realized that his cell phone had been stolen. The victim reported this incident to police.

37 August 30, 2005; 2:43 am [05-242-014]

Burglary in progress at business. An employee discovered the crime and reported the incident.

38 January 9, 2006; 3:06 pm [06-009-145]

Stolen credit card used at business.

39 January 9, 2006; 3:07 pm [06-009-146]

Fraudulent check cashed at business.

40 April 21, 2006; 9:20 pm [06-111-229]

Suspicious person stopped by officers in lot of business. Arrested for outstanding warrants. It is undetermined whether the suspect was a store customer. The officers initiated this event. No call for service was received.

41 May 23, 2006; 12:24 pm [06-143-108]

Forged check cashed at business.

42 May 31, 2006; 6:11 pm [06-151-245]

Suspicious juvenile stopped by officers in front of business. Arrested for violation of probation warrant. It is undetermined whether the suspect was a store customer. The officers initiated this event. No call for service was received.

43 June 2, 2006; 3:30 pm [06-153-168]

911 hang-up call from pay phone.

JERRY'S MARKET ACTIVITY

July 2001 – July 2006

44 June 29, 2006; 8:03 am [06-180-065]

Domestic quarrel between male and female while parked in front of business. Female broke window to vehicle. It is undetermined whether either party was a store customer. Correctional Officers from the Elmwood Correctional Facility reported this incident to police.

45 July 13, 2006; 11:52 pm [06-194-236]

Several people talking loud and laughing in the lot of business, disturbing neighbors. Officers contacted several people in the lot and instructed them to quiet down. It is undetermined whether these individuals were customers of the store. The person who reported this incident to police was a nearby resident who was disturbed by the noise.

ATTACHMENT # 2

JERRY'S MARKET & DELI
1491 S. Main Street, Milpitas, CA 95035

September 9, 2006

Dear Neighbors:

Please attend the HOA meeting at Zanker School this Monday, September 11, 2006 at 7:00 p.m. to discuss whether you support or oppose our application to be allowed to be allowed to sell spirits (such as scotch, vodka, rum) in addition to the beer and wine we already sell. We intend to makeover our store to become a "Trader Joe's"-type store offering the range of products that make those stores so popular. We will not become a liquor store.

We have had several meetings with the residents of the Pines, especially those who live nearest the store. They have voiced opposition to Jerry's request to sell spirits based on their concerns about crime, noise and litter in the Pines common area behind Jerry's Market. To address those concerns, Jerry's Market, in exchange for the right to sell spirits, is offering the following conditions that will certainly improve things for Pines residents.

If Jerry's Market is permitted to sell spirits along with beer and wine, we propose the following conditions on the City's conditional use permit and the ABC license:

REDUCED HOURS OF OPERATION: Jerry's Market is presently allowed to be open from 6:00 a.m. to 2:00 a.m. We offer to close at 11:00 p.m. every night.

We will also close off the rear parking lot from 10:00 p.m. until 6:00 a.m. These changes alone will substantially reduce the potential for noise disruptions to our nearest neighbors.

CRIME ACTIVITY AND PREVENTION

Several Pines residents bordering the common area park near to Jerry's Market have described seeing evidence of drug use, drinking, loitering and other conduct that inhibits the use of the park by them and their children. They also told us about efforts to start up a "Neighborhood Watch" program and arrange closer coordination with the Milpitas police department to improve this situation.

Jerry's Market offers to pay the HOA \$100,000 to bolster its crime prevention efforts. This money could be used as the HOA determines. For example, a professional "Neighborhood Watch" coordinator could be hired to get that program up and running and ensure it is effective. Off-duty police could be hired to enforce the HOA's rules against drinking and loitering in the common areas and any other trouble spots.

ADD "GOOD NEIGHBOR" SIGNS: We have already put up several "Good Neighbor" signs in our parking lot to remind our customers to avoid loud noise and music that might disturb our nearby neighbors.

LITTER AND GRAFFITI PREVENTION: On Jerry's Market property, Jerry's Market will pick up litter and paint over graffiti twice each day.

IMPROVE VIDEO SURVEILLANCE OF JERRY'S PARKING AREA: We will install two more cameras (4 total) to give complete coverage of the parking area and we will keep the video recordings for 14 days and make them available to law enforcement upon request.

ADD VIDEO SURVEILLANCE OF HOA'S COMMON AREA. Jerry's also offers to the HOA that it will provide and maintain on Jerry's property one or more cameras that will view the HOA side of the common wall, provided the HOA will agree that Jerry's Market will not be liable for providing such service.

SIGNS NOT TO LOITER AND NO DRINKING OF ALCOHOL: We will provide improved signs reminding our customers not to loiter and prohibiting any drinking of alcohol on our property.

REPAIR OF COMMON WALL: Jerry's Market offers to contribute \$10,000.00 to the HOA to be used for the repair of the common wall on our property line.

LIMITING FLOOR AREA THAT MAY DISPLAY ALCOHOLIC BEVERAGES: To prevent changing our convenience store to a liquor store, no more than 45% of our customer floor area may be used to display alcoholic beverages.

If our applications to the City and ABC to sell spirits are approved with the above conditions, both the City and the ABC will be able to enforce our compliance with these conditions with stiff fines, permit and license suspensions or permit and license revocation.

We invite your further suggestions, and we ask that you agree to support, or withdraw your opposition to, our application to sell spirits subject to the above conditions.

Sincerely yours,

Aslam Ali

ATTACHMENT # 3

Jun 16 06 09:01a

JONES & FORREST INC.

408-269-9070

p.1

Jones and Forrest, Inc.
3851 Charter Park Drive, #101
San Jose, Ca. 95136
(408) 269-9040
(408) 269-9070 FAX

JONES AND FORREST, INC.

Fax

To: Cindy - City of Milpitas

From: Donna Marie

Phone: 585-3293

Date: 6/16/06

Starlito Pines (HOA)

Re: Annual Meeting Minutes 5/1/06 CC: Page 1 of 5

☐ Urgent

☐ For Review

☐ Please Comment

☐ Please Reply

☐ Please Recycle

* Comments:

Revised per Board Comments
June 12, 2006

STARLITE PINES HOME ASSOCIATION
ANNUAL MEETING
MINUTES AND MANAGER'S NOTES

MAY 1, 2006

The meeting was called to order by Russ Bargstadt at 7:29 p.m.

VERIFICATION OF QUORUM

A quorum of homeowners was represented at the meeting with a total of three hundred seventy (370) homeowners being represented. There were two hundred eight-eight (288) homeowners represented by proxies and eight-two (82) homeowners in attendance.

PROOF OF NOTICE OF MEETING

Dewayne Cantu reported that notice was given of the meeting to all homeowners in accordance with the requirements of California Civil Code and the governing documents for Starlite Pines Home Association.

PRESIDENT'S ADDRESS

Russ Bargstadt (President): Stated that the Association has done well this year and has been able to keep cost down for the third year. Unfortunately, the Association experienced one (1) disaster, that being the fallen tree. Guy Hass then stated that Patricia Forrest of Jones and Forrest communicated that the majority of the tree has been removed. Currently the cost for the removal of the root ball from the tree is being addressed with the City of Milpitas.

AGENDA

At this time Rod Mier stated that tonight's meeting was scheduled as the Annual Meeting of homeowners only. The City previously informed homeowners tonight's meeting was set up for the discussion of the license application made by Jerry's Deli.

Michael Paul Novotny (36 Greentree Way): Stated that he would like to add the discussion of the license application for hard liquor that is being reviewed by the City of Milpitas.

Due to the large turn out of homeowners, Rod Mier made a motion to allow homeowners to speak for three (3) minutes regarding the liquor license application. This motion was

Starlite Pines Home Association
Annual Meeting Minutes and Manager's Notes
May 1, 2006
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also to allow the City of Milpitas Planning Staff to speak. The motion was seconded by Guy Haas. A vote by the show of hands was requested from homeowners in attendance. Fifty (50) raised their hands in agreement and seven (7) opposed.

APPROVAL OF MINUTES AND MANAGER'S NOTES

A copy of the May 2, 2005 Reconvened Annual Meeting Minutes and Manager's Notes was distributed to the homeowners present at the meeting. Time was given for the homeowners to review them. A motion was made by Roderick Mier, seconded by Guy Haas and unanimously passed to approve the Minutes and Manager's Notes of the May 2, 2005 Reconvened Annual Meeting as presented.

ASSOCIATION FINANCES

Guy Haas, Chief Financial Officer, stated dues will not increase for the 3rd year. The Association has been able to keep cost down.

The question was asked if homeowners were going to be allowed to approve the budget. Guy Haas explained the only time homeowners review and approve the budget is if the budget reflects an increase of more then 20%. Fortunately this year there is no increase.

ELECTION OF DIRECTORS

Three (3) Board member seats expire this year. Each candidate elected this evening's meeting is elected for a three (3) year term. Four (4) homeowners have stated they would like to be candidates for the Board of Directors. Those homeowners are Bob Church, Raul Gonzales, Elizabeth Hoehnle and Lisa Jose. Raul Gonzales requested his name be removed as a candidate.

Nominations were opened to the floor.

- Roderick Mier nominated Israel Gil. Mr. Gil accepted the nomination.
- Elizabeth Hoehnle nominated Araceli Tapia. Mrs. Tapia accepted the nomination.

There being no further nominations from the from the floor, a motion was made by Roderick Mier, seconded by Guy Haas and unanimously passed to close the nominations from the floor.

Ballots were distributed and collected.

The following candidates were elected as Board Members: Bob Church, Elizabeth Hoehnle and Lisa Jose.

Starlite Pines Home Association
Annual Meeting Minutes and Manager's Notes
May 1, 2006
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NEW BUSINESS

- A. **Plaque in Common Area.** A few homeowners stated they would like to obtain a plaque in memory of Pearl Zanker and install it in the common area at Greentree Way. After some discussion, it was agreed that no more than \$1,000.00 will be spent.
- B. **Solar Powered Lights for Common Areas** – It was stated that some homeowners had expressed their concern for better lighting in the common areas. The Board of Directors stated that research will be done to obtain pricing for solar powered lighting. Once obtained, the homeowners will be advised of the additional cost.
- C. **Jerry's Deli** – Mr. Ali from Jerry's Deli introduced himself and stated his purpose of attending the meeting was to obtain homeowner input regarding his application for selling hard liquor. His application for a change in his use permit was submitted to the City of Milpitas.

Mr. Ali explained he has been in business for five (5) years and has been involved in the community. He lived in Pleasanton and recently moved to Milpitas (four months ago) and would like to retire in the area. He also would like to provide 100% of his services to the community.

The City of Milpitas Planning Staff members stated that the application for the sale of hard liquor is currently under review and will take at least six (6) months for approval or denial.

1. Mrs. Dale Doyle (Lonetree Court): Mrs. Doyle lives behind Jerry's Deli and opposes the sale of hard liquor. She has seen strangers in the park and bottles being thrown over the wall. She is afraid to use the path that runs behind her unit.
2. Gurbax Singh (1167 Sunrise Way): If the local law allows Jerry's Deli to have a liquor license, he is ok as long as hard liquor is not sold to the wrong people.
3. Amit Sachdeva (1580 Pinewood Way): As long as the laws are followed, he is okay with the issuance of a liquor license.
4. Minh Thai (62 Woodland Court): If the owner is responsible, he should be given the opportunity.
5. William Lee Mulcahy (16 Greentree Circle): He has seen bottles thrown over as well as people climbing over the wall. This is a large concern for the children who play in the area.
6. Loren Plumb (39 Greentree Way): His concern is not the storeowner, but the sales of hard liquor. Mr. Plumb said his home has been burglarized four (4) times.

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Annual Meeting Minutes and Manager's Notes
May 1, 2006
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He is not aware if the incident was caused as a result of Jerry's Deli, but fears there may be an increase in the number of incidents.

7. M. Eugenia Allen-Egbert (1568 Fallen Leaf Drive): Homeowners must first attempt to change the current laws, because they are not uniform.
8. Ms. Irene C. Johnson (56 Lonetree Court): The common area walkway path runs along the perimeter of her unit. This path has always been for Pines' homeowners. Not a public access. With the availability of hard liquor, she feels this pathway will become a nuisance and more traffic will be seen. There will be more trespassers and loitering.
9. Roderick Mier (408 Gibbons Court): He has seen future plans currently being reviewed by the City of Milpitas Planning Department and agrees those plans are for the greater good of the Association. The future plans will not be affected by a decision regarding Jerry's Deli selling hard liquor.

In addition to the above homeowners there were approximately twenty homeowners who spoke sharing their displeasure in the thought of Jerry's Deli being issued a liquor license. There were approximately three residents that were in favor of the liquor license being issued to Jerry's Deli.

After the group of speakers were completed, it was asked if there were additional people who wanted to speak in favor of approval of Jerry's Deli being granted a hard alcohol license. There were no additional speakers on behalf of Jerry's Deli. The Board then asked for a show of hands of the 82 homeowners present that were against the issuance of a hard alcohol license. Nearly every hand was raised.

HOMEOWNER QUESTIONS AND CONCERNS

Michael Paul Novotny (36 Greentree Way): The playground on Woodland Court has people loitering. He would like to have the bench removed to prevent this.

Russ Bargstadt (President) stated that any homeowner witnessing loitering should contact the City of Milpitas Police Department.

ADJOURNMENT

There being no further discussion, the meeting was adjourned at 8:51 p.m.

ATTACHMENT # 4

STARLITE PINES HOME ASSOCIATION BOARD OF DIRECTORS MEETING MINUTES AND MANAGER'S NOTES September 11, 2006

BOARD OF DIRECTORS:

Russ Bargstadt	President	Present
Rod Mier	Vice-President	Present
Michelle Irvine	Secretary	Present
Guy Haas	Chief Financial Officer	Present
Lisa Jose	Director	Present
Bob Churich	Director	Present
Elizabeth Hoehnle	Director	Present

MANAGEMENT COMPANY

Patricia E. Forrest of Jones and Forrest, Inc.

NON-HOMEOWNERS PRESENT

Mr. Ali, Jerry's Market
Mr. Rick Warren, Attorney for Jerry's Market
Cindy Hom, City of Milpitas, Planning Staff Member
Michael Tomlin, Zanker Elementary School

CALL TO ORDER

The meeting was called to order by Russ Bargstadt, President, at 7:05 p.m.

ADDITIONS and/or DELETIONS to the AGENDA

A motion was made by Rod Mier, seconded by Guy Haas, and unanimously passed to approve the Agenda for the September 11, 2006 Board of Directors' meeting as presented.

JERRY'S MARKET

Rick Warren provided a handout to all of the homeowners present noting the conditions being offered by Jerry's Market for the Association's agreement to not challenge the issuance of a variance to Jerry's Market use permit to allow off premises liquor sales. The following are the conditions offered:

Reduce Hours of Operation

Jerry's Market will close at 11:00 p.m. every night.
Close off the rear parking lot at 10:00 p.m.

Bolster Crime Prevention

Jerry's Market will pay the Association \$100,000 to bolster its crime prevention.

The money could be used as the Association determines.

Hire "Neighborhood Watch" coordinator or off-duty police.

Repair Common Wall

Jerry's Market will contribute \$10,000 to the Association to repair of the common wall on the common property line between Jerry's Market and The Pines.

Add "Good Neighbor" Signs

Jerry's Market has put up several "Good Neighbor" signs to remind its customers to avoid loud noise and music.

Add Video Surveillance of Association's Common Area

Jerry's Market will provide and maintain on Jerry's property one or more surveillance cameras.

Improve Video Surveillance of Jerry's Market Parking Area

Jerry's Market will install two more cameras (4 total) to give complete coverage of the parking area.

Improve Litter Pick-up and Graffiti Prevention

Jerry's Market will pick up litter and paint over graffiti twice each day.

Improve Signs Prohibiting Loitering and Drinking Alcohol

Jerry's Market will provide improved signs reminding its customers not to loiter and prohibiting any drinking of alcohol on Jerry's Market property.

Limit Floor Area that May Display Alcoholic Beverages

No more than 45% of Jerry's Market's customer floor area may be used to display alcoholic beverages.

The question was raised: "What happens to the promises made by Mr. Ali if Mr. Ali sells the store? Mr. Warren stated the conditions run with the land and will be continued with the new owner.

Loren Plumb, 39 Greentree Way – Mr. Plumb contends there is a law presently on the books that a soft liquor license would not be issued to a new store coming into this area, let alone a hard liquor license. Mr. Warren disagreed that there was such a thing as a soft and hard liquor license.

Mike Novotny, 36 Greentree Way – Mr. Novotny wants to know why this is being brought before the homeowners again? These conditions were already discussed with homeowners at the walk through and they were turned down. Mr. Novotny stated the option of closing the parking lot early may not be available to Mr. Ali. Mr. Novotny echoed Mr. Plumb in his comment that if a new store was going into the current Jerry's Market location, a soft liquor license would not be allowed. Jerry's Deli is requesting a hard liquor license through a legal technicality. One comment made in a previous meeting with Mr. Ali and Mr. Warren, is that Mr. Ali is requesting a hard liquor license because he cannot make enough money as it is. Now; however, Mr. Ali is offering the Association \$100,000. It appears Mr. Ali is making sufficient money.

Scott Goldberg, 251 Capitol Avenue – Mr. Goldberg wanted to know if Mr. Ali is willing to put additional money up if one of his children gets hurt.

Carmella Tomasini, 86 Woodland Court – Ms. Tomasini does not feel comfortable to walk alone in this area. She also does not understand why this issue is again being brought up to the homeowners.

Mrs. Gigi Doyle, 80 Lonetree Court – Mrs. Doyle stated that she is angry. It doesn't appear that the homeowners and their wishes are being listened to. She won't be bribed into giving her approval to the issuance of a hard liquor license. Mrs. Doyle stated that Mr. Ali has offered to purchase the last home located on Lonetree Court (next to the playground) which is presently for sale for \$665,000. Mrs. Doyle stated that there had been much misrepresentation by Mr. Ali and various people working on his behalf. Mr. Ali presently has several liquor licenses. Mr. Ali has lost some of the licenses for selling to minors. Mrs. Doyle gave an account of the police calls pursuant to Jerry's Market. Mr. Warren responded that Jerry's Market made a number of the police calls due to someone issuing a bad check, using a false credit card, etc.

Ms. Tapia, 1736 Starlite Drive – Ms. Tapia stated that someone acting on behalf of Mr. Ali came to her front door and wanted her to sign a petition agreeing to the issuance of an off premises liquor license. She questioned the person regarding what was to be sold at the market. She had to ask many questions before the person asking for her signature gave her the true story of what would be sold at the market. Ms. Tapia is concerned for the children of The Pines. Ms. Tapia wanted to know why Jerry's Market has not been doing

beautification to the property in the past. Why now? Ms. Tapia has a day care center and she likes to take her children on group walks. She refuses to take them past Jerry's Market because of the profanity, drinking on the sidewalk, and double parking in the driveway while customers are waiting for a parking place in Jerry's Market's lot.

Wilfred Kong, 1696 Fallen Leaf Drive – Mr. Kong has been to a number of the meetings regarding the approval of a use permit variance to Jerry's Market for the sale of hard alcohol. At each meeting, it has been made clear that homeowners in The Pines are against the issuance of a use permit variance and the selling of ~~hard liquor at Jerry's Market.~~ Why is it necessary to continue having to go to meetings? Is Jerry's Market trying to tire homeowners out so they will approve the issuance of a use permit variance to allow the sale of hard alcohol? Mr. Kong spoke directly to the City of Milpitas staff at the meeting and wanted to know why this information was not taken to the City previously?

Lauren Plumb, 39 Greentree Way – Mr. Plumb questioned Mr. Warren's statement that most of the calls to the police were from Jerry's Deli. Only two of the six calls were from Jerry's. He feels that \$100,000 is not sufficient.

Scott Goldberg, 251 Capitol – Mr. Goldberg stated he has heard numerous promises pertaining to what Jerry's Market is going to do to help. Mr. Goldberg no longer takes his son on walks through the Pines, 'because he finds derelicts "sleeping it off."'

John Shields, 45 Lonetree Court – Mr. Shields stated that he has nothing against Mr. Ali. Hard liquor sales are not wanted in the vicinity of The Pines. A request for a hard alcohol license has previously been turned down to previous owners of Jerry's Market. Mr. Shields is tired of having to fight this time after time. He is interested in quality of life and not profit. Russ Bargstadt stated he has been through this three times since he has lived at The Pines. He feels that this will continue to happen. The question was asked if the Association could get the Jerry's Marketing wine and beer license revoked. Russ Bargstadt said there is a way to accomplish this, but this evening's meeting was not the place to discuss this and he was not prepared to talk about it this evening.

Ms. Haas, 1277 Fallen Leaf Drive – Ms. Haas has concerns over the people who are being released from jail during the day and night times. The first place they head to is somewhere to get a smoke and a drink. Ms. Haas says there is a lot of competition for Jerry's Market when it comes to selling hard liquor. She doesn't think children should have to walk past a place of business selling hard liquor on their way to school.

Gigi Doyle, 80 Lonetree Court – Ms. Doyle wanted to know why The Pines does not start proceedings to have Jerry's Market beer and wine license revoked?

Rosemary Fowler, 86 Lonetree Court – Ms. Fowler wanted to echo the sentiments of other homeowners. She and her husband were returning home from a trip when they came upon Jerry's Market. There were numerous cars double parked waiting to get parking spaces in the parking lot. There were so many that they were backed up into the street. She and her

husband tried to go around them and one of the cars pulled over so they had to go further out into oncoming traffic to get around them. The vehicle that was blocking their way then turned around and followed them home. Ms. Fowler went to Jerry's Market last Saturday to see what changes had been made. She noticed that the dirty magazines were gone. She didn't see any drug paraphernalia. She did see graffiti in the parking lot. She noted that there is affordable housing being built just across the street from Jerry's Market. It is her concern that if a hard liquor license is issued, there will be many more instances of problems.

Rod Mier, 415 Gibbons Court – Mr. Mier's remarks were addressed to the City Staff at the meeting. His concerns are the effect on property values if a hard alcohol license is issued. He has not heard anything that will increase property values, only decrease. Quit bringing this issue to the homeowners again and again. The homeowners are tired of coming to the meetings. Maybe Mr. Ali would sell the building to the Association to be used as a recreation building for The Pines' residents.

Tom Morse, 1253 Stellar Way – Mr. Morse stated a lot of good comments were made by the homeowners tonight. There is a Planning Commission meeting on September 27, 2006. Is this meeting open to the public to make comments? Cindy Hom said "Yes". Mr. Mier stated that Jerry's Market is open until 1:00 a.m. The only people who would be likely to be stopping by Jerry's at this time of the morning would be folks who were coming home from someplace like the movies at the Great Mall. Who are they selling to?

Raul Gonzales, 1300 Sunrise Way – Mr. Gonzales is in favor of Mr. Ali being granted a use permit. He feels the previous comment made regarding affordable housing was a racist comment. Russ Bargstadt requested that comments not be made on a personal level. They should be kept professional.

Richard Longworth, 1480 Fallen Leaf Drive – Mr. Longworth takes his hat off to those people who have stood up and made their positions known regarding the sale of hard alcohol. He is interested to know what additional Mr. Gonzales has to say.

Mr. Gonzales, 1300 Sunrise Way – Mr. Gonzales feels that Mr. Ali is just trying to make a living.

Rod Mier stated that he would like to hear the position of each of the Board members.

Guy Haas, 1277 Fallen Leaf Drive – Mr. Haas is against the issuance of a hard liquor license to Jerry's Market. Mr. Haas also raised the question whether there is any other place in town that sells hard liquor that close to homes, commons area, or a school.

Elizabeth Hoehnle, 1120 Starlite Drive – Her kids and husband shop at Jerry's Market. She has always been opposed to the issuance of a hard alcohol sales license.

Michelle Irvine, 1873 Forest Court – Opposed to the hard liquor license.

Lisa Jose, 1683 Starlite Drive – Against the issuance of a hard liquor license.

Bob Church, 1267 Sunrise Way – He is not impacted by the selling of the alcohol. He is acting on behalf of the desires of the homeowners behind Jerry's Market and is against the issuance of a hard liquor license.

Russ Burgstadt, 1307 Stardust Way – He is not affected by Jerry's Market. He is trying to fulfill his fiduciary responsibility as President of Starlite Pines Association.

A motion was made by Rod Mier to close the discussion regarding Jerry's Market. The motion was seconded by Guy Haas and unanimously passed.

HOMEOWNER QUESTIONS AND CONCERNS

1. Mike Tuan Vu, 1087 Starlite Drive, Lot 822 – This is the home that has been billed for the irrigation repair caused by the installation of the block wall at his property. As of August 31, 2006, this amount remains unpaid on the Tenant Balance Due Report.
2. Willie Miller, 156 Lonetree Court, Lot 348 – As of the August 31, 2006 Tenant Balance Due Report, the fine remains unpaid.
3. Lori M. Ray (Daughter of Mr. Huerta), 1811 Fallen Leaf Drive, Lot 135 – A letter remains to be directed to Ms. Ray regarding providing information that she is on the Grant Deed.
4. Delbert and Fe Benson, 424 Starlite Court, Lot 805 – Mr. and Mrs. Benson submitted a drawing requesting permission to change the flat roof of the garage to a pitched roof. The garage is presently detached from the home. When installing the pitched roof, it will be connected to the home. The Benson's are also requesting permission to install a sliding glass door to gain entry to the garage from the exterior of the home where the roof has connected the garage to the home. Discussion was held and a motion was made by Rod Mier to approve the installation of a pitched roof over the garage and connecting to the home and the installation of a sliding glass door to the area between the house and garage. The motion was seconded by Guy Haas and unanimously passed.

MANAGER'S NOTES

1. Jerry's Deli – Discussed earlier in the Minutes and Manager's Notes.
2. Eucalyptus Tree Removal – Rod Mier contacted Pat Forrest and stated the Reserve Conservation District is no longer in San Jose. He was going to contact them and request assistance pertaining to the "V" ditch cracks and erosion of the creek bank.

Older's Landscaping was requested to investigate the irrigation line with sprinkler heads which are between the back of the soundwall and the creek bed. Discussion was held and a motion was made by Rod Mier to spend up to \$1,000.00 in legal fees for ascertaining the Association's liability and position regarding creek bank erosion. The motion was seconded by Lisa Jose, and unanimously passed.

The information has been received pertaining to the Santa Clara Water District department to be billed for the emergency cut up and removal of the Eucalyptus Tree. Pat Forrest will now bill them.

3. The Revised Delinquency Policy as approved by the Board of Directors was mailed to all homeowners.
4. Complaint to Department of Real Estate – At the June meeting, additional complaint forms were provided to the Board of Directors. This item was tabled.
5. Election Rules incorporating the Civil Code change have been generated and a copy provided to the Board of Directors. Homeowners are to be notified thirty days in advance of the meeting when the Board of Directors will be discussing the Election Rules. When the Election Rules are approved by the Board of Directors, they will be provided to the homeowners. The revised election rules provide for blind ballot voting. Discussion was held and a motion was made by Michelle Irvine to discuss the Election Rule Change at the November 13, 2006 meeting. The motion was seconded by Rod Mier and unanimously passed.
6. Solar Light Poles – Manufacture of the solar light information was provided to BTS Electric and Lights R Us. Ken Kunkle of BTS Electric stated that the solar operated fixtures and poles are built to specification for each job. The manufacturer requires several pieces of information be provided to them which requires walking the property, investigation, and then communication to the manufacturer. If the Board would like to formulate this information and provide it to Ken Kunkle, he will contact the manufacturer and obtain a final quote for the fixture. If the Association wants him to formulate the information, there would be a charge. It is BTS Electric's opinion, that depending on the length of time the Association wants the light to work over night, the cost per fixture and pole is in the range of \$3,000-\$6,500. This does not include installation. Discussion was held and a motion was made by Rod Mier to approve three hours for BTS to compile the information for the solar light manufacturer. The motion was seconded by Michelle Irvine and unanimously passed.
7. Notice of Board action was provided to Charles Morrone to proceed with the lien on APN 086-18-037 and foreclosure on APN 086-20-029.
8. The Board requested quotes for monthly landscape maintenance. Pat Forrest provided the Board with a quote received from TruGreen LandCare. The quote is for \$6,200.00 per month. This provides for 1 man, 5 days per week, full time, plus the use of a

mowing crew. If the Association would like the hours cut back, a reduced quote can be provided.

Coast Landscaping was requested to provide a quote. It was not available as of this evening's meeting.

Pat Forrest was requested to get information for the Board regarding the amount of hours included in the current Older's contract. How much has been spent in additional labor (excluding material)? This item was tabled until additional information is received.

Michelle Irvine stated Older's still is not putting the green valve caps back on.

9. The Board of Directors was provided with a letter from the City of Milpitas regarding Russ Bargstadt's application for the Planning Commission. Russ Bargstadt stated that he has an interview with the City tomorrow. The position is as an alternative Council member and there are three other applicants.
10. Backflow Prevention Specialist was asked to perform the test and certification of the last backflow prevention device not previously completed. Additional information is not known at this time.
11. 1205 Fallen Leaf Drive, Lot 488 – A copy of the letter received from the homeowner notifying of a change in address was provided to the Board of Directors. The annual dues have not been paid for 2005 or 2006. The past due invoice was mailed to the homeowner at the new address. There is \$23.19 in late and interest charges. Pat Forrest asked if the Board is willing to waive these charges if the homeowner requests it. A motion was made by Guy Haas, seconded by Lisa Jose, and unanimously passed to deny a request, should one be received, to waive late and interest charges on this account.

APPROVAL OF MINUTES

A copy of the August 14, 2006 Minutes and Manager's Notes was provided to the Board of Directors.

A motion was made by Guy Haas, seconded by Rod Mier, and unanimously passed to approve the August 14, 2006 Board of Directors' Meeting Minutes and Manager's Notes as presented.

FINANCIALS

Pat Forrest provided the Accounts Payable checks for signature. A motion was made by Guy Haas, seconded by Rod Mier, and unanimously passed to approve and sign the payables for September 2006 as presented.

Financial Summary: For the two months ending August 31, 2006 there is \$100,291.33 in Operating Cash, \$97,742.35 in Reserve Cash, and \$20,239.59 in Accounts Receivable including \$150.00 in Fines. There is a Net Profit of \$123,573.42. This is not an accurate Net Profit inasmuch as the dues are collected one time per year and the expenses are drawn from this amount each month during the year.

A motion was made by Guy Haas, seconded by Lisa Jose, and unanimously passed to approve the August 31, 2006 financial statements as presented.

The \$50,000.00 CD that matured August 17, 2006 was rolled into a new 180-day CD with MB Financial Bank. The maturity date is February 15, 2007. The interest rate being earned is 4.98% with a yield of 5.11%.

Rod Mier wanted to know if the Association could purchase the Jerry's Market building if it became available. Pat Forrest stated this is something that would have to be voted on by the homeowners and it would require a special assessment of the homeowners. The reserves cannot be used for this purpose.

OLD BUSINESS

All OLD BUSINESS items were discussed under MANAGER'S REPORT.

NEW BUSINESS

1. Next Meeting
Monday, October 9, 2006, at 7:00 p.m., at the Milpitas Community Center
2. Mike Tomlin, Zanker Elementary School, - Mike Tomlin stated that Back to School night is this Thursday. Because of the increased enrollment, it is necessary for Zanker to open two additional classrooms to the school. Zanker Elementary School STAR marks are higher than the State of California requirement. In October there will be a Beautification Day at the school. The school has received BFI grant money in the amount of \$6,000. The bare dirt area around Zanker School will have irrigation and

plant material installed. Mike will provide additional information regarding the exact date of the Beautification Day.

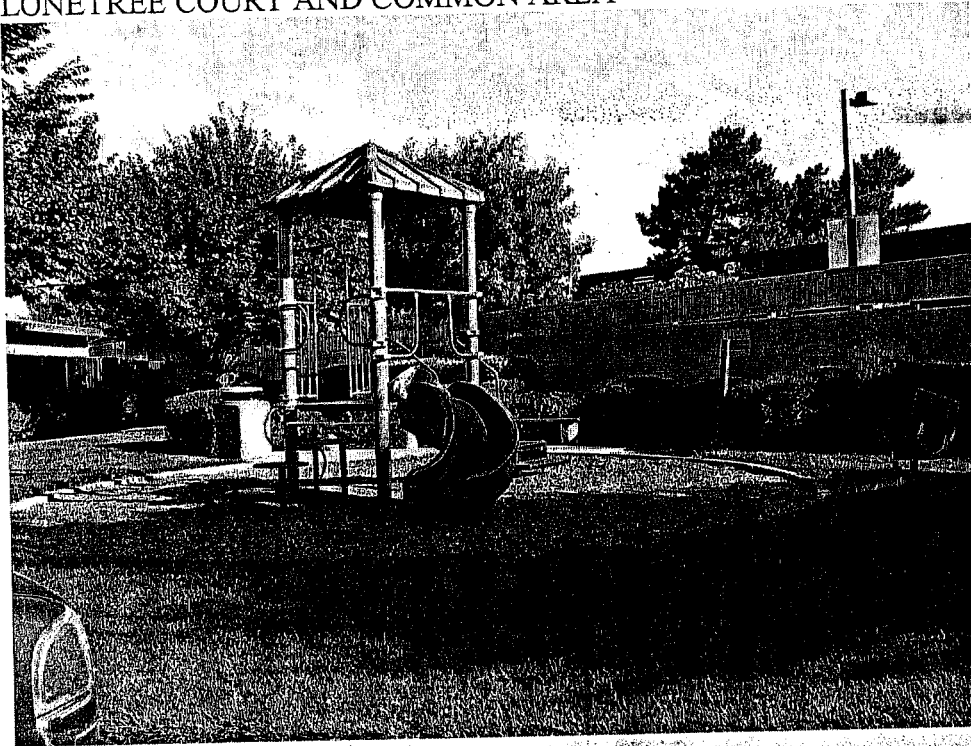
Mike stated that he was glad to hear the passionate comments made by the homeowners regarding the issuance of a hard liquor license this evening.

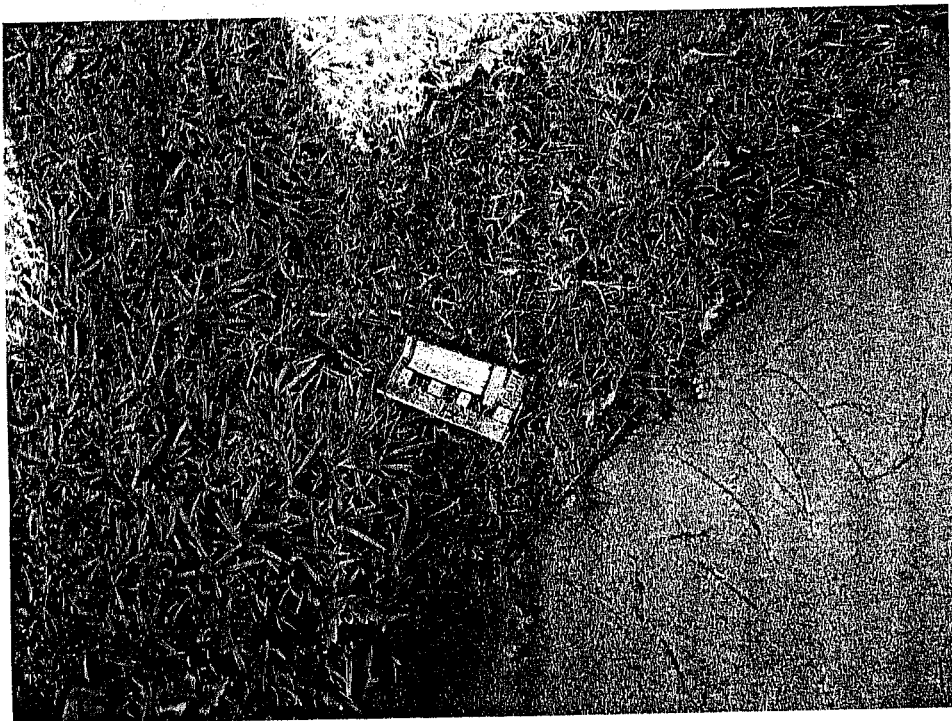
ADJOURNMENT

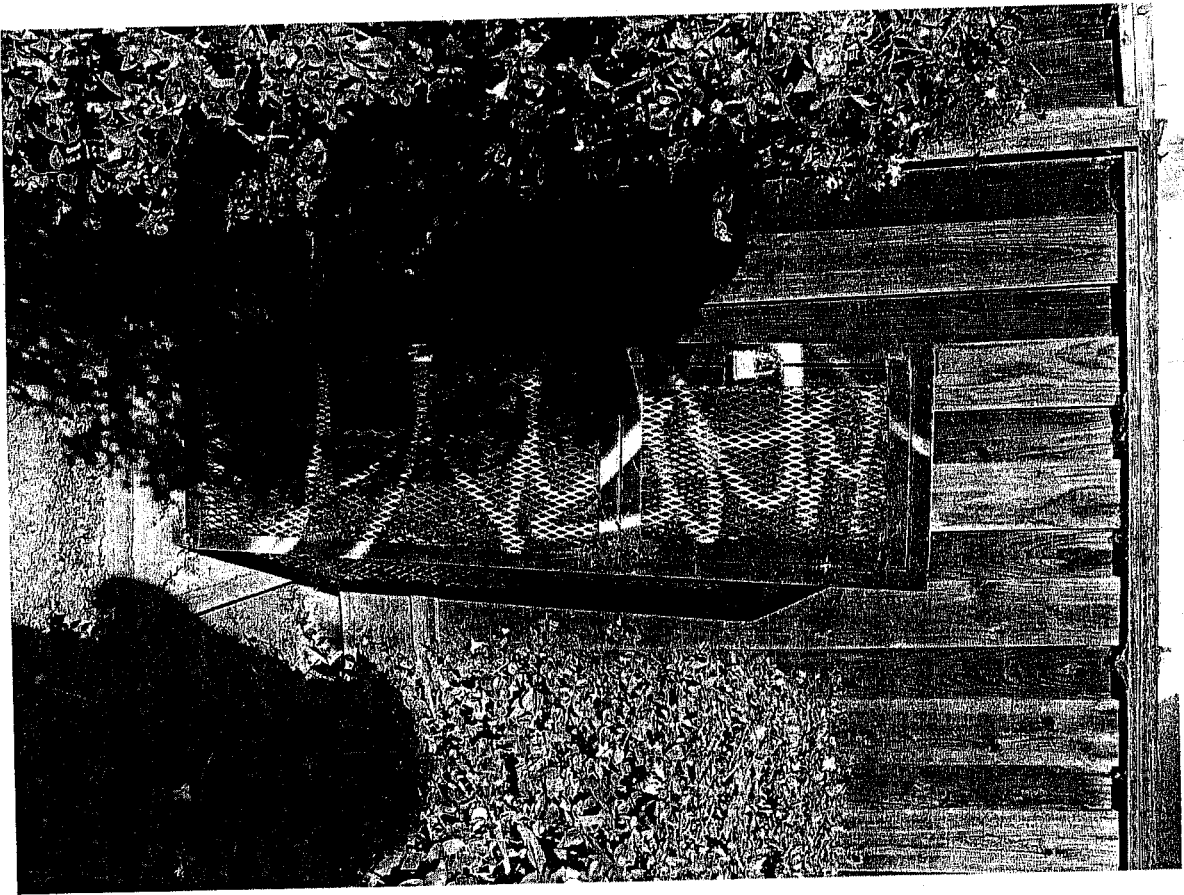
A motion was made by Rod Mier, seconded by Guy Haas, and unanimously passed to adjourn the meeting at 8:35 p.m.

ATTACHMENT #5

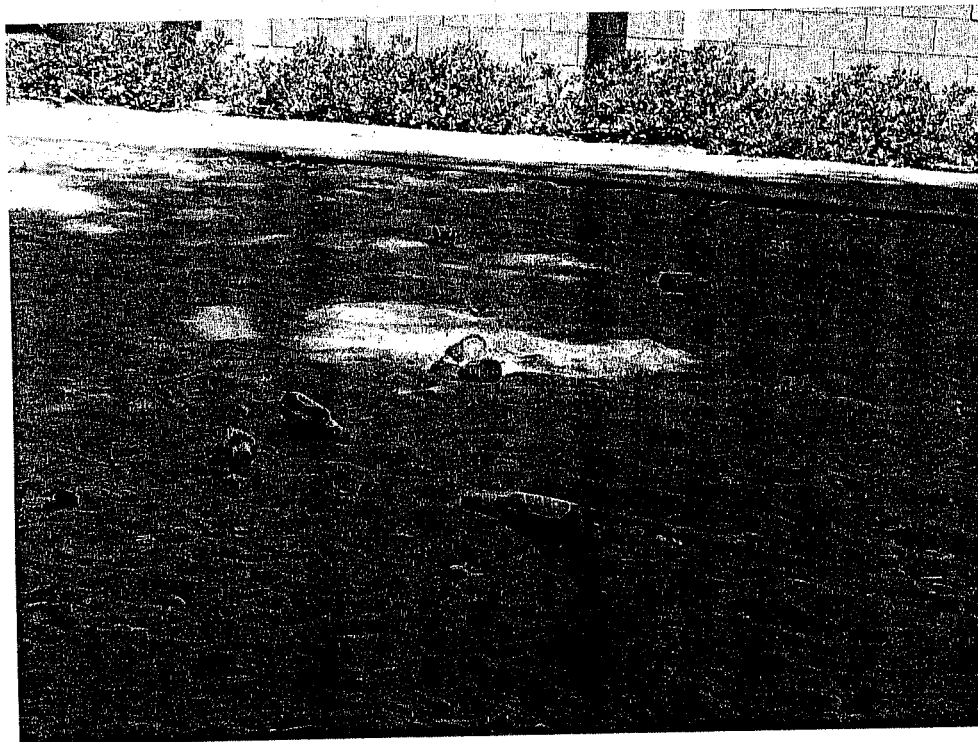
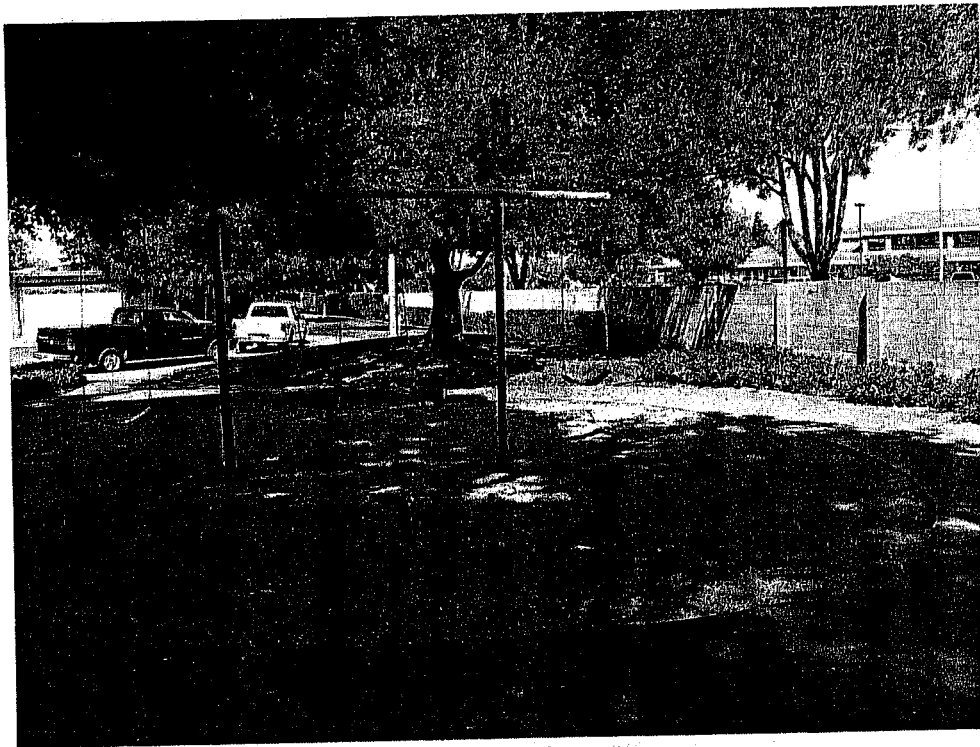
LONETREE COURT AND COMMON AREA

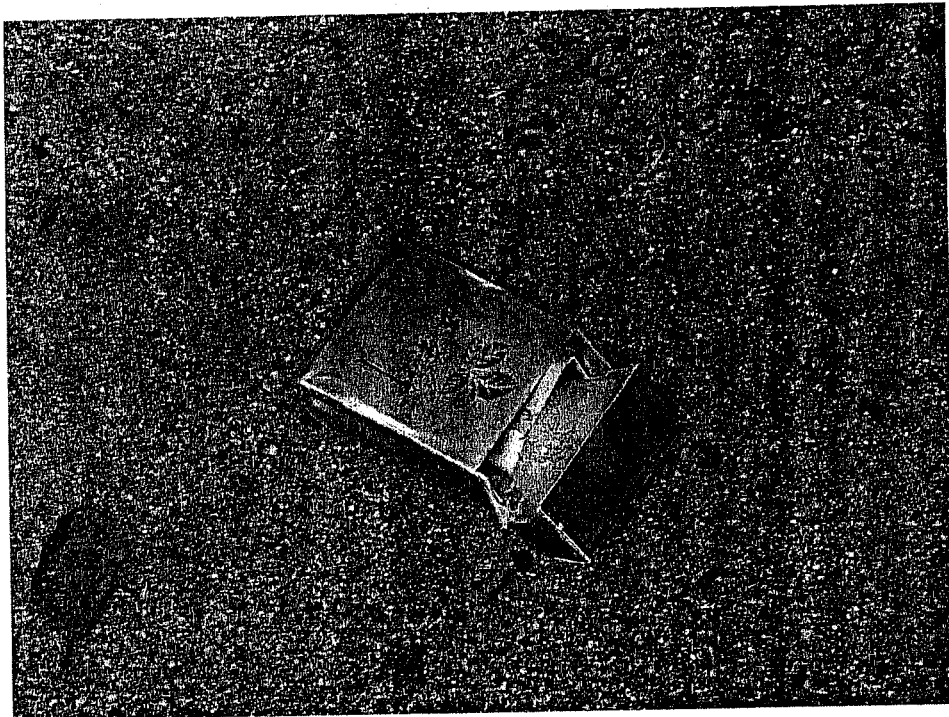


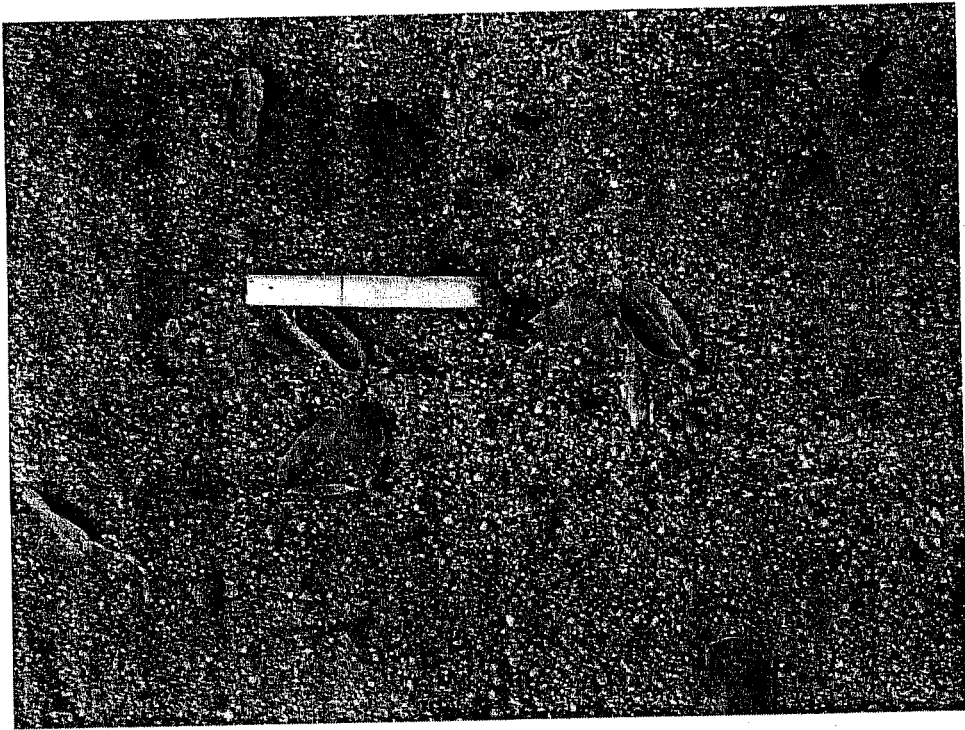




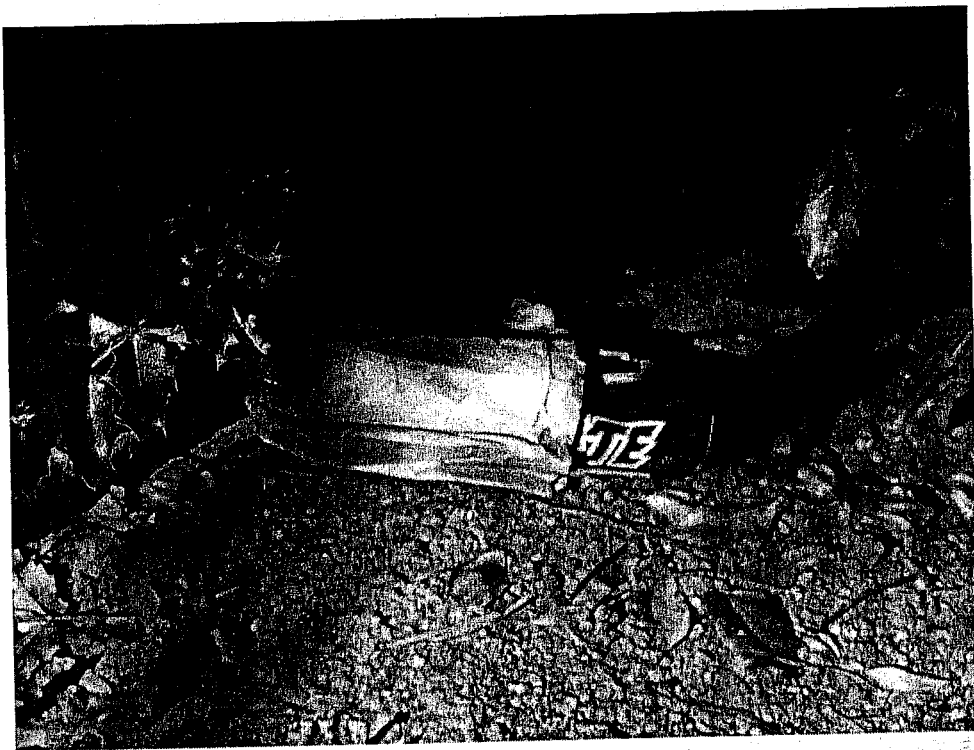
MINI PARK AND COMMON AREA NEXT TO WOODLAND CT AREA



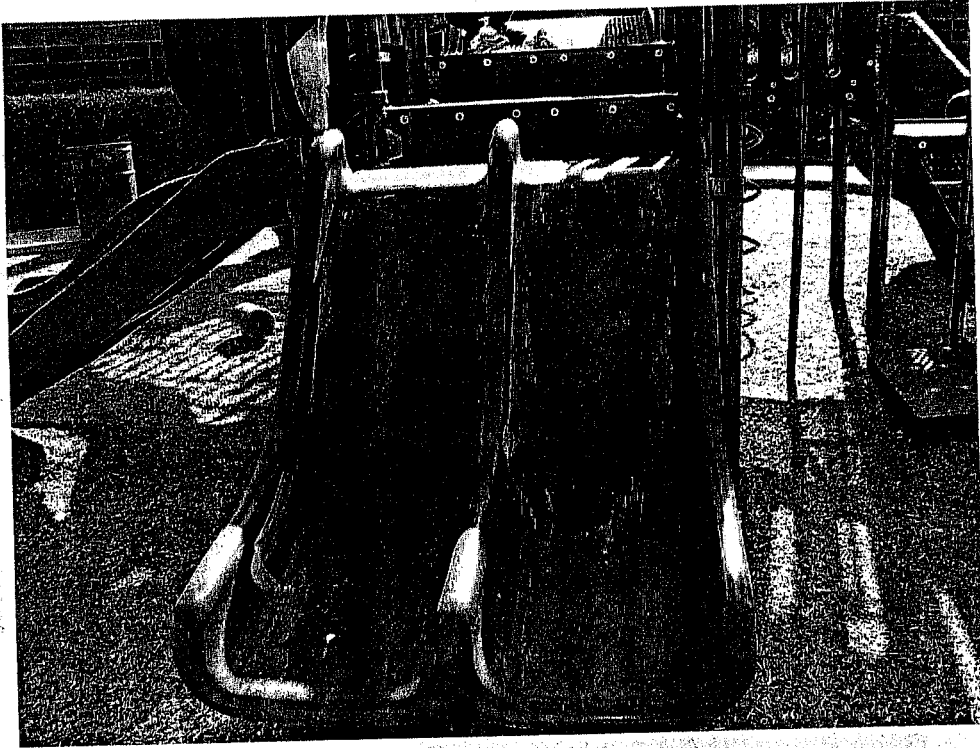


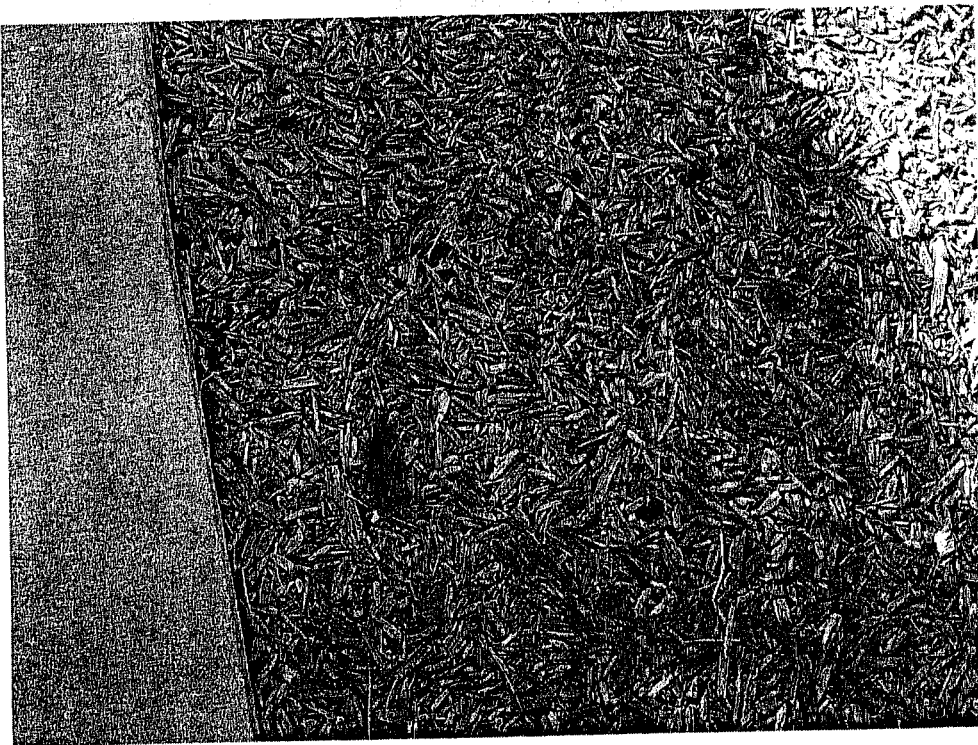


EVENING STAR COURT AND COMMON AREA









MINI PARK AREA AND COMMON AREAS ALONG HWY 880 AND MONTAGUE

